

# Court of Appeals, State of Michigan

## ORDER

John Anthony & Associates LTD v County Line Nurseries Inc

Docket No. 259647

LC No. 04-427333-CK

Helene N. White  
Presiding Judge

Kurtis T. Wilder

Karen M. Fort Hood  
Judges

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The motion for immediate consideration is GRANTED.

Pursuant to MCR 7.205(D)(2), the Court orders that the trial court's November 9, 2004 order denying defendants' motion to change venue is REVERSED. A trial court's ruling on a motion to change improper venue is reviewed under the clearly erroneous standard. *Massey v Mandell*, 462 Mich 375, 379; 614 NW2d 70 (2000). Where a defendant challenges venue, the plaintiff has the burden to establish that the county he or she chose is a proper venue. *Witt v C.J. Barrymore's*, 195 Mich App 517, 521; 491 NW2d 871 (1992), overruled on other grounds 443 Mich 617 (1993). In this breach of contract action, venue is determined by reference to MCL 600.1621(a). In particular, the question here is whether defendant County Line Nurseries "conducts business" in Wayne County such that venue is proper therein. The phrase "conducts business" in MCL 600.1621(a) has been interpreted to require a defendant to have a "real presence" in the county, as might be shown by "systematic or continuous dealings" inside the county, or conducting its "usual and customary" business within the county. *Miller v Allied Signal Inc*, 235 Mich App 710, 719; 599 NW2d 110 (1999), citing *Chiarini v John Deere Co*, 184 Mich App 735; 458 NW2d 668 (1990). In this case, the trial court relied upon evidence that defendant County Line Nurseries conducted business in Wayne County in 2002. However, the burden of proof was on plaintiff, and in the absence of any evidence that, at the time of the filing of the instant action in 2004, defendant had "systematic or continuous dealings" inside Wayne County, or conducted its "usual and customary" business within Wayne County, plaintiff failed to meet its burden.

This matter is REMANDED to the trial court for further proceedings consistent with this order. We do not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 19 2005

Date

*Sandra Schultz Mengel*  
Chief Clerk